

1 Robert M. Waxman (SBN 89754)
rwaxman@ecjlaw.com
2 Banu S. Naraghi (SBN 312754)
bnaraghi@ecjlaw.com
3 **ERVIN COHEN & JESSUP LLP**
9401 Wilshire Boulevard, Ninth Floor
4 Beverly Hills, California 90212-2974
Telephone (310) 273-6333
5 Facsimile (310) 859-2325

Attorneys for Plaintiff VIZIO, INC., a California corporation

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

VIZIO, INC., a California corporation,

Case No. 8:22-cv-856

Plaintiff,

V.

A PARENT MEDIA CO. INC., an Alberta, Canada corporation; and DOES 1 through 10, inclusive,

Defendants.

**PLAINTIFF/COUNTER-
DEFENDANT VIZIO INC.'S
ANSWER TO A PARENT MEDIA
CO. INC.'S COUNTERCLAIMS
AGAINST COUNTER-
DEFENDANT VIZIO, INC. FOR:**

1. BREACH OF CONTRACT

Action Filed: April 22, 2022
Counterclaims Filed: June 3, 2022

AND RELATED COUNTERCLAIM

1 Plaintiff/Counter-Defendant, VIZIO, Inc., a California corporation
2 (“VIZIO”), for itself only, answers the Counterclaim for (1) Breach of Contract
3 (“Counterclaim”) filed by Defendant/Counter-Claimant A Parent Media Co. Inc.
4 (“APMC”), as follows:

5 1. For its answer to Paragraph 1 of the Counterclaim, VIZIO admits the
6 allegations thereof.

7 2. For its answer to Paragraph 1 of the Counterclaim, VIZIO admits the
8 allegations of the Counterclaim.

9 3. For its answer to Paragraph 3 of the Counterclaim, VIZIO is without
10 knowledge or information sufficient to form a belief as to the truth of said paragraph
11 and thereon denies the same.

12 4. For its answer to Paragraph 4 of the Counterclaim, VIZIO is without
13 knowledge or information sufficient to form a belief as to the truth of said paragraph
14 and thereon denies the same.

15 5. For its answer to Paragraph 5 of the Counterclaim, VIZIO is without
16 knowledge or information sufficient to form a belief as to the truth of said paragraph
17 and thereon denies the same.

18 6. For its answer to Paragraph 6 of the Counterclaim, VIZIO admits that
19 jurisdiction is proper.

20 7. For its answer to Paragraph 7 of the Counterclaim, VIZIO admits that
21 venue is proper.

22 8. For its answer to Paragraph 8 of the Counterclaim, VIZIO admits that
23 APMC runs a service called Kidoodle.TV; Vizio is without knowledge or
24 information sufficient to form a belief as to the truth of the remaining allegations in
25 said paragraph and thereon denies the same.

26 9. For its answer to Paragraph 9 of the Counterclaim, VIZIO is without
27 knowledge or information sufficient to form a belief as to the truth of said paragraph
28 and thereon denies the same.

1 10. For its answer to Paragraph 10 of the Counterclaim, VIZIO admits that
2 APMC began discussions with VIZIO regarding integration of Kidoodle.TV into
3 VIZIO smart televisions; VIZIO is without knowledge or information sufficient to
4 form a belief as to the truth of the remaining allegations in said paragraph and
5 thereon denies the same.

6 11. For its answer to Paragraph 11, VIZIO realleges the admissions, denials
7 and averments made in response to Paragraphs 1-10 of the Counterclaim as though
8 set forth in full hereat.

9 12. For its answer to Paragraph 12, VIZIO admits the allegations of that
10 paragraph.

11 13. For its answer to Paragraph 13, VIZIO admits that the Internet
12 Applications Agreement, the Revenue Share Addendum and the Ad Inventory
13 Addendum speak for themselves; except as to expressly alleged herein, VIZIO is
14 without knowledge or information to form a belief as to the truth of said paragraph
15 and thereon denies the same.

16 14. For its answer to Paragraph 14, VIZIO admits that the parties entered
17 into a series of Insertion Order agreements which speak for themselves; except as
18 expressly alleged herein, VIZIO is without knowledge or information to form a
19 belief as to the truth of said paragraph and thereon denies the same.

20 15. For its answer to Paragraph 15, VIZIO denies each and every allegation
21 of said paragraph.

22 16. For its answer to Paragraph 16, VIZIO denies each and every allegation
23 of said paragraph.

24 17. For its answer to Paragraph 17, VIZIO denies that APMC has suffered
25 damages in any sum whatsoever as the proximate result of any acts or conduct of
26 VIZIO; VIZIO further denies each and every allegation of said paragraph.

27 18. For its answer to Paragraph 18, VIZIO denies the allegations of said
28 paragraph, including that APMC is entitled to any judgment against VIZIO.

ANSWER TO PRAYER FOR RELIEF

For its answer to Paragraphs 1-2 of the Prayer for Relief, VIZIO denies that APMC is entitled to the relief sought in these paragraphs; VIZIO further denies that APMC is entitled to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

**(FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE
A CLAIM FOR RELIEF)**

1. For its first separate and affirmative defense to the Counterclaim and each and every purported claim therein, VIZIO alleges that APMC fails to state facts sufficient to constitute claims for relief against VIZIO.

SECOND AFFIRMATIVE DEFENSE

(BREACH OF CONTRACT BY APMC)

2. VIZIO alleged that APMC materially breached the Internet Applications Platform Agreement, August 2020 AVOD Insertion Order, January 2021 AVOD Insertion Order, Insertion Order 1377, July 2021 AVOD Insertion Order, and Media Plan Insertion Order in paragraphs 19-29 of its Complaint filed in the within action on April 22, 2022 (“Complaint”).

3. VIZIO incorporates these paragraphs 19-29 from its Complaint herein as though set forth in full herein.

4. For its second separate and affirmative defense to the Counterclaim and each and every purported claim therein, VIZIO is informed and believes, and thereon alleges, that APMC's material breaches of the Internet Applications Platform Agreement, August 2020 AVOD Insertion Order, January 2021 AVOD Insertion Order, Insertion Order 1377, July 2021 AVOD Insertion Order, and Media Plan Insertion Order excused any further performance on the part of VIZIO and APMC is barred from any relief or recovery against VIZIO by virtue of APMC's own breaches of the aforementioned agreements.

111

THIRD AFFIRMATIVE DEFENSE

(UNCLEAN HANDS OF APMC)

5. VIZIO realleges and incorporates herein by reference paragraphs 2-4 from its Second Affirmative Defense.

6. For its third separate and affirmative defense to the Counterclaim and each and every purported claim therein, VIZIO alleges that by reason of the foregoing acts, conduct and unclean hands of APMC, it should be barred from any relief or recovery against VIZIO.

FOURTH AFFIRMATIVE DEFENSE

(ESTOPPEL OF APMC)

7. For its fourth separate and affirmative defense to the Counterclaim and each and every purported claim therein, VIZIO is informed and believes, and thereon alleges, that APMC is barred and estopped from any relief or recovery against VIZIO.

FIFTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE DAMAGES)

8. For its fifth separate and affirmative defense to the Counterclaim and each and every purported claim therein, VIZIO is informed and believes, and thereon alleges, that APMC is barred from claiming any injury or damage because it and other persons/entities affiliated with it caused all injury or damage and APMC as well as each of them have failed to reasonably and properly mitigate APMC's purported damages, if any, and APMC is therefore, precluded from obtaining the relief sought, or any relief.

SIXTH AFFIRMATIVE DEFENSE

(DISCHARGE)

9. For its sixth separate and affirmative defense to the Counterclaim and each and every purported claim therein, VIZIO is informed and believes, and thereon alleges, that its obligations, if any, to APMC were discharged in whole or in

part.

SEVENTH AFFIRMATIVE DEFENSE

(SUBSTANTIAL PERFORMANCE)

4 10. For its seventh separate and affirmative defense to the Counterclaim
5 and each and every purported claim therein, VIZIO is informed and believes, and
6 thereon alleges, that its obligations to APMC were fully or substantially performed.

EIGHTH AFFIRMATIVE DEFENSE

(PERFORMANCE EXCUSED)

9 11. For its eighth separate and affirmative defense to the Counterclaim and
10 each and every purported claim therein, VIZIO is informed and believes, and
11 thereon alleges, that its obligations, if any, to APMC were excused in whole or in
12 part.

NINTH AFFIRMATIVE DEFENSE
(WAIVER)

15 12. For its ninth separate and affirmative defense to the Counterclaim and
16 each and every purported claim therein, VIZIO is informed and believes, and
17 thereon alleges, that APMC waived any and all alleged counterclaims asserted by it
18 against VIZIO.

TENTH AFFIRMATIVE DEFENSE

(NEGLIGENCE OF APMC)

13. For its tenth separate and affirmative defense to the Counterclaim and
each and every purported claim therein, VIZIO is informed and believes, and
thereon alleges, that APMC's negligence contributed to the purported damages
sought in the Counterclaim and that such damages, if any, should therefore be
reduced accordingly, on the basis of comparative negligence or fault.

26 | //

27 | //

28 | //

ELEVENTH AFFIRMATIVE DEFENSE
(SUPERSEDING EVENTS)

14. For its eleventh separate and affirmative defense to the Counterclaim
 and each and every purported claim therein, VIZIO is informed and believes, and
 thereon alleges, that APMC's alleged injuries or damages, if any, were proximately
 caused, wholly or in part, by supervening events or the acts, omissions, negligence,
 neglect or other wrongful acts of parties, persons, entities or corporations other than
 VIZIO, and APMC's recovery against VIZIO, if any, must be reduced by such
 supervening events or activities of such other parties, persons, entities or
 corporations.

TWELFTH AFFIRMATIVE DEFENSE
(OFFSET)

15. VIZIO has set forth claims for relief against APMC and others in its
 Complaint. VIZIO is informed and believes, and thereon alleges, that to the extent
 (if any) that APMC is awarded any purported damages by virtue of its
 Counterclaim, such amount should be decreased by the relief granted to VIZIO in
 conjunction with its Complaint.

18. WHEREFORE, VIZIO prays for judgment against APMC on its
 Counterclaim as follows:

20. 1. That APMC take nothing by way of its Counterclaim;
 21. 2. For costs of suit incurred herein as well as reasonable attorneys' fees;
22. and
23. 3. For such other and further relief as this Court deems just and proper.

1 DATED: June 22, 2022

ERVIN COHEN & JESSUP LLP
2 Robert M. Waxman
3 Banu S. Naraghi

5 By: /s/ Robert M. Waxman

6 Robert M. Waxman
7 Attorneys for Plaintiff VIZIO, INC., a
California corporation

10 ERVIN COHEN & JESSUP LLP
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28